were the only firms to bid against PageMart for Block 1 licenses after round 12. Other large firms may not have bid because they already acquired what they wanted, or because they wanted to avoid retaliatory bidding if they bid against PageMart.

- Bidding preferences for minorities and women increased competition and prices for unreserved licenses, which may have been depressed by tacit collusion, market preferences for large firms or incumbents, or market biases against minority, women-owned or small firms.

Relevance to Compelling Interest and Narrow Tailoring:

This study demonstrates the importance of FCC programs to reduce access to capital barriers for minorities and women. Ayres and Cramton conclude that even though the bidding credits for minorities and women were "bid away" by the competition within the set-aside block, the availability of bidding credits and installment payments may have encouraged firm formation and funding. The cross-over competition permitted by allowing small firms to use installment payments for any licenses may have been an additional incentive to formation and funding.

The study also demonstrates that these programs can increase competition and diversity of spectrum ownership. However, those interests have not been held to be compelling enough to justify remedial actions for minorities and women. Eliminating capital access barriers against minorities and women may be a sufficient compelling state interest to justify such remedies.

Examining whether such programs are "narrowly tailored," this auction demonstrates that competition can be more effective when minorities and women are not effectively confined to one block of licenses offering subsidies, but are allowed to compete for all licenses using the incentives offered. This is analogous to the program upheld in Grutter or the Harvard Affirmative Action program cited in Baake. The Baake court held unconstitutional an admissions policy which set-aside a certain number of places for minorities. The Michigan Program in Grutter allowed minorities to compete for all places, providing for individualized consideration of each applicant. While the incentives in the Narrowband Auction were not individualized, the concept of allowing competition for all licenses is more analogous to the educational programs upheld in Grutter or the construction programs permitted in the wake of Adarand.

This type of competition also occurred in the FCC comparative hearing applications for broadcast licenses. When incentives were offered for minority and women, their participation in an application was a factor considered for all licenses awarded. In KPMG's Logistic Regression study of FCC comparative hearings, they found that applications with high minority participation were more likely to face competition, rather than receive a license as an uncontested singleton application. Minority participation in the comparative hearings was also associated with more valuable licenses as measured by antenna height and signal coverage, which may explain in part the increased competition.

The comparative hearing and regional narrowband license allocation processes also show that when minorities are given an opportunity to compete through programs which consider their participation to be a plus or reduce capital access barriers, competition is increased overall. This indicates that competition has been artificially reduced by capital access barriers or other practices which have limited minority and women-owned firms' access to licenses.

The Ernest & Young study commissioned by the FCC of minority and women participation in the auctions found that installment payments (the ability to pay for a license bid over a period of time as opposed to within a couple of months of the close of the auction) dramatically increased minority success rates. In auctions with installment payments, minorities had a higher success rate than non-minorities, whereas in those where installment payments were not available, minorities had a much lower success rate than non-minorities.

In the Regional Narrowband Auction studied by Ayres and Cramton, the installment payments were what allowed the "cross-over" bidding by a minority-owned firm, giving them a price advantage over the large business bidder. In that auction, the only small businesses that participated were those controlled by minorities and women, although participation was open to all small businesses. Financing sources may have been skeptical that small businesses could compete against large firms for licenses not set-aside for them. The incentives offered to minority and women-owned firms may have encouraged their formation and capital funding, and the installment payments made them more competitive for all licenses. This may address in part the narrow tailoring argument regarding whether these objectives could be achieved through incentives for small businesses only. The incentives offered for minorities and women that attracted their participation and funding to compete in the auction.

In constructing a narrowly tailored program, the agency would have to consider not only the benefits of the program (reducing capital access barriers, increasing competition and ownership diversity), but also the burdens on those to whom the government incentives are not made available. However, the increased "burden" of high prices might be mitigated if those prices were viewed as artificially low because of lack of competition, tacit collusion between large bidders or market barriers and practices (such as capital access issues) that limited competition from minorities and women.

Remedying Market Based Discrimination

A. Minority-Targeted Programming: An Examination of its Effect on Radio Station Advertising Performance, Kofi A. Ofori, Ofori & Associates, January 2001

Compelling Interest: Remedying Market-based Discrimination

Summary:

In this unpublished study funded by a grant from Syndicated Communications Venture Partners II L.P. to the National Black Media Coalition, Ofori analyses factors that may affect station revenues.[12] Ofori selected 5 markets with large African-American and Hispanic populations: Miami, Detroit, Houston, Washington, D.C., and New York. He examined the affect of six independent variables on advertising performance as measured by a station's power ratio – the ability of a station to convert its market share of listeners into share of market revenues. The regression analysis revealed that those variables provided 35.7% of the explanation for why advertising performance improves or declines. Listed in the order of magnitude on their impact on advertising performance, the six variables were: whether the station airs news/talk/sports programming, the station's average audience ranking over the past five years, the age group of listeners if the majority was not between 25-54, whether the station aired minority-targeted programming, whether the station was owned by minorities, and whether it is part of a superduopoly (owned by an entity that controls 3 or more stations in the market). Variables related to minority-targeted programming and minority ownership ranked 4th and 5th in the regression model.

For the New York, Washington D.C. and Miami markets, Ofori tested whether listener incomes over $75,000 affected power ratios. He concluded that the six variables were more predictive of station's advertising performance than audience income. The lack of data for the other two markets precluded the analysis of the income variable in those areas.

Key Findings:

- The average power ratio for the minority-targeted stations in the markets studied was .72 compared to 1.15 for general market stations. For news/talk/sports formats, the average power ratio was 1.26. A power ratio of 1 indicates the expected conversion level of audience ratings to revenue.

- The regression analysis Pearson Correlation Coefficients showed several variables inversely correlated to the power ratio: format targeted to minorities (-.410), percentage of minority listeners (-.392), minority ownership (-.295), and average local commercial share rank over five years (.-266). Factors positively correlated with power rations were: percentage of listeners with incomes of $75,000 or more (.332), ownership index of 5 ownership factors (.327), number of stations owned in the local market (.306), news/talk/sports programming (.290) and parent revenues (.268).

- Carol Lawrence, Director of Sales of Radio One of Detroit said that she had seen avails labeled "No Urban Dictated" or "No Country Dictated." She said that the

[12] A copy of Mr. Ofori's study is on file at Santa Clara University School of law with Professor Sandoval.

effort to avoid advertising on stations at the time of the interview was more covert and subtle.

- Martha Davies, a media buyer with J.L. Media Inc. of Miami said that "No Urban/Hispanic Dictates" were not as prevalent as they used to be, but "we still get them." She recalled a car dealer who four years earlier used the "N" word when declining to buy time on an urban station. According to Ms. Davies, the dealership did not want Blacks coming into their showroom. The rationale given was that Blacks "have bad credit" or "can't get paper (financing)."

- Several interviewees (Less Robinson of WMXD in Detroit and Rosylan Williams of R.P. Consulting) also felt that the race of the media buyers influenced decisions. Interviewees said advertising agencies tend to employ young white women to place buys.

- The average minority format audience was 52% larger than the news/talk/sports audience.

- News/talk/sports stations in the markets studied had, on average, 73% White audiences, compared to 49% African-American and Hispanic for stations not in that format in the markets studied.

- The news/sports/talk stations in the markets examined garnered high market revenue shares. They have more inventory, available commercial slots, up to 30 per hour, than competitors than other formats. Advertisers are also attracted to their affluent, largely white male audience.

Methodology:

Ofori selected 5 markets with a large African-American and Hispanic populations: Miami, Detroit, Houston, Washington, D.C., New York. He conducted a multiple regression analysis of 120 stations to test the affect of six variables on a station's power ratio – it's ability to convert audience ratings into revenue. The six variables were: whether the station airs news/talk/sports programming, the station's audience ranking, listener age groups, whether the station airs minority-targeted programming, whether the station is owned by minorities, and whether it is part of a superduopoly in the same market. His analysis began by examining information for all 266 stations in the five markets, based on the Media Access Pro database published by BIA Research, providing station information through the last quarter of 1999. Audience demographic and station revenue data was not available for all stations. He eliminated stations from the dataset where information was incomplete. He examined the remaining 120 stations. He also interviewed 10 individuals in management positions at stations and media buying agencies. He classified stations if minority-targeted if they broadcast in formats labeled "Black, Urban, Spanish or Ethnic."

Relevance to Compelling State Interest:

This unpublished study supports the theory that minority ownership is correlated with lower market revenues. Interview testimony revealed that broadcasters have seen advertising placement avails labeled with "No Urban Dictates," and that advertisers have declined ads because they didn't want members of certain minority groups in their place of business. Other studies have shown that minority radio owners are more likely to broadcast in formats targeted at minority audiences. Ofori's regression analysis indicated that minority format is also negatively correlated with converting audience share into revenues. These practices affect a firm's ability to amass capital to provide programming to their audiences and acquire more media outlets.

Preventing Discrimination – Passive Government Involvement

A. NTIA/OPAD/MTDP, Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States (2000)

Compelling Interest(s): Preventing Discrimination; Passive Government Involvement

Summary:

The report provides a history of NTIA's role in promoting minority ownership. It then explores the critical issue of how to define minority ownership and the implications of different definitions. The report then reviews the longstanding value of viewpoint diversity, and examines its role in a changing industry. The report describes the impact of consolidation on minority owners.

From 1998 to 2000 there was a modest increase in minority commercial broadcast ownership and in the growth of some minority station group owners who acquired more broadcast properties. The report shows that the vast majority of minority broadcast owners operate a single commercial radio or television station. These owners continue to face obstacles in a competitive broadcast marketplace, despite their willingness to seek new revenue streams and adopt new management and ownership arrangements. As detailed in the report, minority station owners contended that industry consolidation exacerbated some of the barriers that have long plagued them, including equitable access to capital, deal flow, advertising, and broadcast employment opportunities.

Increasingly, many broadcasters are moving beyond traditional single-station ownership and embracing new management and ownership arrangements. In addition, many broadcasters are adopting new technologies to redefine how they broadcast their material. These are important developments that we will continue to monitor for their effect on minority owners' participation in this field.

Key Findings:

Positive:

- Over the last two years, minorities as a whole have made some gains. In 2000, 187 minority broadcasters owned 449 full power commercial radio and television stations, or 3.8 percent of the 11,865 such stations licensed in the United States. These figures represent an increase of 0.9 percentage points of the number reported in 1998. However, about half of this increase was the result of an improved methodology to identify minority owners.

- Minority owners have made some gains in the commercial radio industry, and some previous owners have been newly identified. In 2000, 175 minority broadcasters owned 426 stations, or about 4.0 percent of the Nation's 10,577 commercial AM and FM radio stations. This compares to their ownership of 305 radio stations in 1998, which represented 2.9 percent of that year's industry total. Again, half of the increase came from newly identifying already existing owners.

- All minority groups have increased their radio ownership since 1998. In terms of absolute growth, the number of Hispanic-American owned stations increased the most with the addition of 57 stations, followed by an increase of 43 African-American owned, 18 Asian-American owned, and three Native-American owned. Excluding the effect of the improved search methodology, however, the number of African-American owned stations increased by 15 percent, and Hispanic-American owned stations by 19 percent, Asian-American owned stations by 300 percent, and Native-American owned by 25 percent. The large increase in Asian-American owned stations was largely the result of purchases by one owner.

- African Americans' ownership of 211 radio stations in 2000 continues to lead that of other minorities and represents almost half of all minority-owned radio stations. Hispanic Americans owned 187 stations or 44 percent of all minority radio stations.

Findings of concern:

- Minority owners' share of the commercial television market decreased in 2000. The 23 full power commercial television stations owned by minorities in 2000 represented 1.9 percent of the country's 1,288 such licensed stations. This is the lowest level since MTDP began issuing reports in 1990. That year, minorities owned 29 full power television stations, compared to as many as 38 during 1995 and 1996. Between 1998 and 2000, there was a loss of five Hispanic-American and four African-American owned stations, and a new identification of two Asian-American owned stations, for a net loss of seven stations.

- While the broadcast industry's strong performance in recent years has benefited some minority owners and may help explain the increase in the number, consolidation still threatens the survival of most minority owners, who as primarily single-station operators find it difficult to compete against large group owners.

- At a time when single-station owners are struggling to remain competitive, 61 percent of minority owners operate stand-alone stations. In 2000, 131 or 31 percent of minority-owned stations were part of a duopoly (two or more stations of the same type in the same market) compared to 36 percent of non-minority competitors. Seventeen minority-owned stations, or 4 percent, participated in a local marketing agreement, while 8 percent of non-minority competitors did so.
- As reported in past years, minority owners continue to own more AM than FM stations. In 2000, minorities owned 248 AM stations and 178 FM facilities. Declining AM listenership over the past 15 years and the technical limitations of these stations make them generally less profitable than FM stations

Methodology:

The report is the product of a written survey of minority broadcast owners, written comments solicited through a Federal Register notice, comments offered at a public meeting held on July 18, 2000, and analysis of publicly available information, including a commercial database.

Relevance to Compelling Interest(s):

The report documents minority owners' perceptions of the impact of the industry consolidation caused by government relaxation of the multiple ownership and duopoly rules.

The report also documents that minority owners seem inclined to locate stations in areas more heavily populated with members of their respective racial or minority group. This has meant that a larger share of minority-owned stations (except for Native American) are located in urban areas. Asian- American stations are particularly concentrated in the largest urban markets, with almost half located in the New York and Los Angeles areas. This data addresses the Powell-*Bakke*/O'Connor-*Metro*~*Gratz*~*Grutter* contention that it cannot be assumed that minorities would seek to serve their communities.

B. Discrimination in Capital Markets, Broadcast/Wireless Spectrum Service Providers and Auction Outcomes, By William D. Bradford, Ph.D., December 5, 2000

Compelling Interest(s): Preventing Discrimination; Passive Government Involvement

Summary and Analysis:

This study investigated whether there was discrimination in capital markets in the communications industry when controlling for relevant variables. It examined whether race or gender was a statistically significant variable in predicting an applicant's success in capital markets, and in acquiring a license through the FCC auctions. The study concluded that without a remedy for capital market discrimination, minority and women-owned businesses were disadvantaged in obtaining FCC broadcast and wireless licenses, compared to non-minority applicants.

The authors surveyed broadcast licensees at the time of the study and wireless auction participants. For broadcasters, the survey instrument was mailed to a census of minority licensees and a random sample of non-minority licensees.

The study found that minority broadcast and wireless license holders were less likely to receive debt financing in capital markets than non-minority-owned firms, after controlling for the effect of other variables on the lending decision. It also found that applications for debt financing from female broadcast applicants were less likely to be approved, but the finding was not statistically significant. However, for female wireless applicants, their decreased likelihood of obtaining debt financing was statistically significant.

A statistically significant finding was also made that minority broadcast and wireless borrowers paid higher interest rates on their loans, after controlling for the impact of other variables. Among study participants, a minority firm with the same equity as a non-minority firm was charged a higher interest rate than a non-minority firm, controlling for other variables. Gender was not found to be statistically significant in predicting interest rates differences.

Minority status was correlated at a statistically significant level with a lower probability of winning in spectrum auctions. Gender also reduced the probability of winning at auction, although the correlation was less strong than for members of minority groups.

The authors noted that the data was not fully conclusive due to incomplete data and in some cases small sample sizes. They employed a variety of models to examine the data, but none of the models explained all of the variation.

C. Utilization Rates, Win Rates, and Disparity Ratios for Broadcast Licenses Awarded by the FCC, KPMG LLP, Economic Consulting Services, November 2000

Narrow Tailoring: FCC program taking race and gender into account

Summary and Analysis:

The study measures license aware rates by gender and race during periods of time when the FCC's stated policy was to provide preferences to minorities and women. From the 1940's until 1993, the FCC used Comparative Hearings to allocate broadcast license when more than one person applied for a channel. Minority participation in station ownership was taken into account by the FCC evaluation since 1974.

KPMG examined the utilization rate through several measures. It looked at the "win rate," the percentage of licenses won by each racial group divided by total awards for all groups. Participation (or availability) refers to the percentage of total availability that each group compromises. The authors defined availability as those who actually applied for a license. They acknowledge this is a very narrow definition of availability as opposed to looking at potentially "qualified applicants." They chose this measure because of the difficulty of defining qualifications to hold an FCC license: unlike the contracting context, there is no group of pre-qualified bidders such as licensed contractors.

They also examine disparity, a measure of utilization relative to availability. Most studies of this type have concluded that if the disparity ration is substantively less than 1, for example .08, then discrimination may explain the result.

KPMG examined data at the FCC archives in Suitland, Maryland for 3,063 parties involved in 775 applications in a sample of 230 comparative hearings from 1978-1981 and 1989-1993. They examined the paper database for the Administrative Law Judge (ALJ) Listing for the period prior to 1983, and the BAPS electronic database for the subsequent period. The authors did not examine data for the period before FCC minority preferences because of insufficient information on applicant race in the records.

The authors noted that minority participation in the comparative hearings was low compared to their relative percentage in the U.S. population. See table p. 18.

Table 7, p. 23, shows that minorities won at a slightly higher rate, 9.9% than their participation rate 8.9%, while non-minorities won at a slightly lower rate, 90.1% vs. their 91.1% participation rate. However, Table 11, p. 27 shows that win rates were lower in radio for Hispanics and American Indians. The "Disparity Ratio" defined as percentage winning divided by percentage participation, was .96 for Hispanics and .40 for American Indians in radio, where it was 1.00 for Whites, 1.14 for African-Americans and 1.33 for Asians. In television, only Whites and American Indians showed Disparity Ratios of less than 1.00; the ratio was .98 for Whites and .67 for American Indians. See table 9, p. 25. One could conclude from this data that the FCC minority preferences were effective for African-Americans in winning radio and television licenses through comparative hearings, although they were far less effective for Native Americans. Hispanic success in obtaining radio licenses was slightly lower.

KPMG also used a "relative award rate" measure, examining the percentage of license awards to minorities relative to average minority participation. No disparity was defined as zero. If minorities were awarded licenses less than suggested by their percentage of applications, the value would be negative, if they are awarded more, the value would be positive. They counted applications as "minority" when the number of minorities in the application exceeded the number of non-minorities, and as females when females predominated the application group. They also used equity as a determinant of control of the application. This measure controls for competition within hearings of different sizes (number of applications) and places minority and female participation and win rate within the context of its particular hearing. The non-minority award rates are positive .015

where counts of the parties from each group are used, whereas minorities register - .015. Using the definition where the group with the most equity is defined as the winner, the non-minority award rate is lower at -.006 and higher for minorities at .006. These differences are not statistically significant, although the differences between male and female awards by party count are statistically significant, .09 for males and -.09 for females.

A third utilization ratio measure was developed showing the number of applications each group controlled from an equity perspective, counting a group as minority or woman controlled only when they owned 50% or more of the applicant's equity. The authors define this as the "Narrow Availability Measure." They also look at a "Broad Availability Measure," defined as any participation by a demographic group in an application. Using the narrow availability measure defined by equity control, minority and female-controlled groups won more radio applications than did non-minority or male controlled groups. In television, minority-controlled applicants won fewer licenses than did non-minority controlled groups, and women outpaced men. See Table 17a, p. 33. Using the broader measure of availability, defining as minority or female applications with any participation by the group, minority and female controlled applicants had a lower probability of winning a license than non-minority and male controlled applications. See Table 18, p. 33.

There were more parties in applications with minority or female representation than there were for applications with white parties (5.9 for minority, 5.5 for female , and 4.3 for white). For winning applications, there were 8.3 parties in winning applications with minority representation, 6.5 parties for winning applications with female representation, and only 5 parties for winning applications with white representation. KMPG concluded this suggested the odds of winning a license may be lower in hearings with minority or female participation.

D. FCC Econometric Analysis of Potential Discrimination; Utilization Ratios for Minority-and Women-Owned Companies in FCC Wireless Spectrum Auctions, December 2000, Ernst & Young LLP

Compelling Interest(s): Preventing Discrimination; Passive Government Involvement

Summary and Analysis:

The report examines the success of minority and women-owned businesses in the FCC wireless spectrum auctions through a variety of measures to define "utilization." The authors found that at a statistically significant level, minority and women applicants were less likely to win at least one license relative to other applicants, measured by the percent of auction winners (those who obtained at least one license) among all auction applicants. The authors termed this method the "General Utilization Ratio."

Ernest & Young also examined the percentage of auction applicants who qualified to bid among all auctions applicants, the "Qualifying Ratio." Applicants had to qualify by submitting a sufficient upfront payment in advance of the auction, after their initial filing with the FCC indicating their interest in participating. They found that minority and women applicants qualified at lower rates than other applicants, and that those differences were statistically significant. Small minority and women-owned firms qualified at statistically lower rates than other small firms, and large minority and women-owned firms also experienced lower qualification rates than their large counterparts.

However, minority applicants who qualified to participate in the auction had higher "Success Rates" than non-minorities, defined as the percentage of auction winners among all qualified applicants. This difference was statistically significant.

However, when the auctions were compared by whether or not the FCC offered installment payments, the ability to pay for the license bid over a period of time as opposed to within a couple of months of the close of the auction, minority success rates were altered dramatically. In auctions with installment payments, minorities had a higher success rate than non-minorities, whereas in those where installment payments were not available, minorities had a much lower success rate than non-minorities. Different installment payment programs were offered in the auctions before the FCC abandoned them. Ernst & Young recommends further study of the effect of installment payments on capital constraints, and on auction price. Ernst & Young did not report whether success ratios varied between small minority or women-owned firms and other small firms based on whether or not installment payments were available. The authors found that small business minority applicants won licenses more frequently than small business non-minorities, but did not overlay this against installment payment availability, or race or ender preferences.

The authors found that among small companies, minority applicants won licenses more frequently than non-minorities, at a statistically significant level. However, they did not break down this comparison by examining the difference between the first three auctions where bidding credits were available for minority or women-owned firms, and those where they were not, or by comparison of auctions featuring installment payment options.

Relative to the amount of upfront payments submitted, minority and women applicants obtained a higher return-on-payment ratio, value of license obtained compared to the value of upfront payments submitted. However, the return-on-payment ratio was much lower for minorities in auctions without installment plans than in those that offered installments. Ratios for women have a similar pattern.

In the first three FCC auctions, minority and women-owned businesses were granted bidding credits. Subsequent to the Adarand decision, only small businesses qualified for bidding credits. The Ernst & Young study does not examine the effect of minority or female bidding credits, as opposed to the availability of installment payments.

E. Logistic Regression Models of the Broadcast License Award Process For Licenses Awarded by the FCC, KPMG LLP, November 2000

Compelling State Interest(s):	Preventing Discrimination; Passive Government Involvement
Narrow Tailoring:	Effectiveness of Race and Gender Conscious Policies

Summary and Analysis:

KPMG analyzed a sample of 230 comparative hearings during time of minority preferences from 1978-1981 and 1989-1993. KPMG then studied a sample of 60 of those 230 comparative hearings, oversampling for minority participation. The 60 comparative hearings involved 203 applications and 66 singleton (only one applicant) license awards.

Both minority and female participation increase the likelihood of a license award. However, the positive presence diminishes as the percentage of female and minority participation rises.

Minority participation, when defined by percentage ownership or majority ownership, does not significantly influence the probability of acquiring a license, while minority participation by applicant count does. For women, both female equity and females in the application increase the likelihood of winning.

Applications with minority participation received extra credit for assets relative to applications with less or no minority participation.

Applications with minority participation were treated less favorably regarding liabilities than applications with less or no minority participation.

Generally, for minority applicants, assets exceeded liabilities so the net effect was positive. However, when minorities were present, financial strength was judged more favorably while financial weakness was judged more harshly.

The authors note a substantially lower minority participation in comparative hearings than their representation in the U.S. population. (See Table 3, p. 11).

Applications with high minority participation were more likely to face competition, rather than receive a license as an uncontested singleton application. Valuable licenses as measured by proposed antenna height were also positively correlated with more competition. Minority participation was greater for more valuable stations judged by antenna height, population and household income, projected construction costs and first year revenues. Settlement amounts were also higher.

F. Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing, 1950 to Present, Ivy Planning Group LLC, December 2000

Compelling Interest(s):	Preventing Discrimination, past and present; Passive Government Involvement; Promoting Universal Service; Promoting Viewpoint Diversity
Narrow Tailoring:	The Effectiveness of Race or Gender Conscious Policies and Race-Neutral Policies on Broadcast License Awards

Summary and Analysis:

This study surveys a census of minority broadcast and wireless licensees from 1950 to 2000, and a random-sample of non-minorities and market "gatekeepers" such as communications attorneys and media brokers. It concludes that access to capital is a problem consistently cited by minorities in their attempts to obtain FCC licenses. They offer several anecdotal reports where non-minorities with similar backgrounds to minorities in terms of industry experience and community participation had an easier time obtaining financing. (pp.17-50)

They report instances of harassment against an African-American broadcaster by the Klux Klutz Klan who threatened his life if he erected a tower to provide programming targeted at the local African-American community. (p. 51) Interviewees reported other instances of being pressured to change from a minority-oriented format, or of their listeners not being wanted or welcomed by potential advertisers. (p. 59) One African-American broadcaster said that in 1999, a potential client told a station salesman (who was the broadcaster's brother) that he normally doesn't want N.....s in his store, but that he would make the buy anyway because the salesman was "different from them," though he normally didn't car for N.....s coming into his store. (p. 59, full word appears in the report).

The report discusses Rev. Everett Parker's attempts to get the FCC to enforce EEO rules, and to revoke the licenses of broadcasters engaged in discrimination against minorities. (pp. 92-93) It also discusses the FCC's allocation of Educational broadcasting licenses to state colleges which refused admission to minorities, and to predominantly white colleges well ahead of allocations to predominantly black colleges. (pp. 94-95).

One minority broadcaster reported working in a station in the South where there were segregated toilets reserved for whites and toilets reserved for African-Americans INSIDE the radio station. (p. 53) Another African-American broadcaster reported that after the removal of the tax certificate program, she attempted to find out about the availability of stations for sale. She was told they were not available or were being sold at prices she found irrational. She asked a friend to make similar inquiries, as housing discrimination testors do, and the was given different information about availability and price. (p. 55)

Interviewees discussed the impact of exclusion from the old boys network on limited information about possible deals. (p. 57) The authors contrasted those experiences to white licensees who reported how helpful their industry colleagues were in obtaining information about opportunities. (p. 58)

Broadcasters also discussed the disparity between their ratings and ad revenues, and difficulties in obtaining parity, due in large part to advertising practices. (p. 59-60) Broadcasters also reported opposition from general market broadcasters to attempts to improve arbitron's data collection success in the Hispanic market. (p. 65)

The report also emphasizes the impact of consolidation on minority broadcasters. The triple whammy of the elimination of the tax certificate program, the 1996 Telecom Act's dramatic lifting of the ownership limits, and the FCC's elimination of minority preferences in the wake of the Adarand decision, has reduced the number of minority broadcasters and increased pressure on them to sell because they cannot effectively compete. (See pp. 68-83, 106-107) Minority broadcasters also emphasized their commitment to community service and the different programming they offered. (id.)

Several interviewees discussed the FCC's policies of grandfathering non-conforming stations so that they did not have to comply with FCC spacing rules, for example. (pp. 97, 117) This limits the ability of subsequently licensed stations to grow and compete. It also favors stations licensed earlier, at a time when there were more constraints on the ability of minorities to contract or obtain financing.

The study surveyed several broadcasters who complained about the lengthy comparative hearing process, lasting 10 years or more including appeals. Many complained of being pressured financially to drop out or spending all of their money in fighting challenges so little was left to operate the station. The FCC rules permitted this process. (pp. 100-106)

G. When Being No. 1 is Not Enough:The Impact of Advertising Practices On Minority-Owned and Minority-Formatted Broadcast Stations, Civil Rights Forum on Communications Policy, January 1999

Compelling Interest(s):	Preventing Discrimination, past and present; Passive Government Involvement; Promoting Viewpoint Diversity

Summary and Analysis:

This study focuses on "no Urban/no Spanish dictates," the practice of not advertising on stations that target programming to ethnic/racial minorities) and "minority discounts," the practice of paying minority-formatted radio stations less than what is paid to general market stations with comparable audiences sizes.

The study concludes that stations that target programming to minority listeners are unable to earn as much revenue per listener as those that air general market programming. This is based on an analysis of market data from BIA research.

The author surveyed minority broadcast general managers and conducted in-depth interviews with 21 broadcasters, many of whom recounted racial stereotypes that advertisers held such as "Hispanics don't bathe as frequently," (p. 40-41) concerns about potential increases in theft rates if they placed an ad on a Spanish-language station (p. 46), the perceptions that "Black people don't eat beef," (p. 2) or the desire of advertisers not to attract minorities to their stores, (p. 45-47)

The study also found that stations targeting minorities encountered "no Urban" or "no Spanish" dictates, where the advertiser has a policy of not purchasing ads on urban or Spanish formatted station, regardless of the price or the data offered to support the proposal. (p. 28-29, 31-32, 58). Katz Media, a firm representing broadcasters in their attempts to pitch sales to advertisers, wrote a memo counseling its general formatted stations on how to compete against minority formatted stations with higher ratings. The memo argued that general formatted stations offered advertisers "prospects, not suspects." Several companies were reported to have "no Urban dictates" including Cadillac, Continental Airlines, Volvo and Starbucks.(p. 58-59) One broadcaster (at a majority-owned station) reported that a media buying service only places ads on their urban formatted station for fried chicken. (p. 58). (At the NABOB convention in May 2004, several broadcasters and representative firm employees mentioned that No Urban dictates were still being actively practice. They reported a recent turn-around of a no urban dictate by Volvo.)

H. Audience Valuation and Minority Media: An Analysis of the Determinants of the Value of Radio Audiences, Journal of Broadcasting & Electronic Media, 46(2), 169-184, 2002, Philip M. Napoli

Compelling Interest(s): Preventing Discrimination; Passive Government Involvement; Promoting Universal Service; Promoting Viewpoint Diversity

Summary and Analysis:

Philip Napoli's study examines the factors that affect the value of radio station audiences, examining whether the minority composition of the audience affects the perceived "value" of the audience. Audiences can be conceived as a "product" that media organizations market to advertisers who seek exposure for commercial messages. Napoli examines the "power ratio" for 461 stations to analyze the effect of various factors on the station's ability to convert its audience into revenues. [13]

[13] Napoli selected the stations for the study based on the data Arbitron publishes (Arbitron provides data on the ethnic composition of station audiences for only markets with significant African-American or Hispanic populations), and the reporting of a station's revenues to BIA research (not all stations report their revenues to BIA). He focused his analysis on the 461 commercial radio stations with revenues reported to BIA and both African-American and Hispanic composition data.

Power ratios express a station's ability to convert its audience share into revenues. The power ratio is computed by dividing a radio station's share of the total radio advertising expenditures in its market, by its share of total radio listening audience in that market. A power ratio greater than one suggests that a station is capturing a greater share of advertising dollars than its audience share would predict, it is "overselling" its audience. Conversely, a power ratio less than one suggests that a station is "underselling" its audience, and is not able to capture as many advertising dollars as its audience share would indicate.

Napoli examined power ratio data from the 1999 Media Access Pro commercial database produced by BIA Research. He conducted a regression analysis using the natural log of the power ratio as the dependent variable. Napoli's analysis tests for the effect of audience racial or ethnic demographic as an independent variable that predicts power ratio. He examined Arbitron data on the percentage of each station's audience that is comprised of various demographic groups, according to age, gender and ethnicity. He defined minority-targeted media outlets by the extent to which the composition of the outlets' audience consisted of minorities. This definition does not rely on the format labels the outlet may use, but looks at the actual audience composition. [14]

The effect of minority ownership was not tested through a separate variable in this study. Kofi Ofori's study conducted for the FCC in 1999 examined the effect of minority ownership on the power ratio. [15] It would be instructive to examine the extent to which minority ownership influences or is affected by the other variables. The Bachen, Hammond study for the FCC on the nexus between minority ownership and news and public affairs content showed that minority ownership made a difference in news and public affairs content, resulting in more programming tailored to minority communities. Thus, examining the effects of minority ownership in such a regression model would be important to the objective of achieving programming diversity. Such an analysis should separate the effects of minority ownership, minority audience, and a minority-formatted label or name, and examine how they interact.

Napoli broke the demographic categories for the stations studied into two, one for men aged 18-54, another for women, aged 18-54, groups many advertisers value. He also examined broadcast band, AM vs. FM as a variable, to account for the difference that signal quality might make. He examined a station's average quarter hour share of the

[14] Kofi Ofori discussed the phenomena of media outlets changing their format labels, i.e., Urban vs. Contemporary Hit Records, to avoid the practice of "No-Urban dictates" or "minority discounts." See, FCC Advertising Study at 78, n.210. Napoli's analysis does not compare the power ratios for stations with format names or labels that are associated with minorities such as "Urban," "Black," "Ethnic" or "Spanish," as opposed to examining the power ratios for stations with high minority audience composition. It would be worthwhile to examine separately the effect of format labels on power ratios, as compared to audience composition. It would also be important to examine the extent to which minority or non-minority owners continue to use labels that may be "stigmatized" by the advertising market, subjecting them to "No-Urban dictates" or "minority discounts" as opposed to changing to a more generic label such as Contemporary Hit Records (CHR).

[15] See FCC Advertising Study at 77-84.

listening audience to account for the possibility that advertisers pay more for larger audiences, independent of the composition of those audiences. For ethnic composition, he examined the percentage of the station's average quarter hour audience that is African-American or Hispanic. Napoli noted that Arbitron does not report ethnic composition for stations in all of the markets that it measures, only in those with a significant minority population, not does it provide data on other ethnic groups within its markets. He also examined the percent of Hispanics and African-Americans in the population in the station's market. He controlled for market size using total radio advertising revenues in the market.

To account for the possible interaction between variables, he created two terms for interactions between audience ethnic composition and market ethnic composition. This addresses the possibility that the effect of audience ethnicity on audience value varies in accordance with market ethnic composition. He also examined the interaction between audience ethnic composition and market size, to account for the possibility that the effect of audience ethnic composition on audience values varies in accordance with market size. He also examined the interaction between audience ethnic composition and market per capita income.

Napoli explained that data on the average income levels of audience members for each station studied was not available through the data sources used. The data are available at significant expense. He stressed that the limited availability and high expense of audience income data even to advertisers, broadcasters and their representatives, limits the extent to which such data are employed in media buying decisions. [16]

The regression analysis compared the power ratios of stations that have large minority audiences to those that do not. Stations whose audience was composed of more than 50% ethnic minorities had an average power ratio of .82, compared to an average power ratio of 1.06 for other stations. He found that the average quarter hour share of Hispanic or African-American listeners was negatively related to power ratios; ethnic composition of the audience appeared to exert a downward pressure on a radio station's ability to convert its audience to advertising revenues. He concluded that the age/gender independent variables are the most important in explanatory power, followed by the ethnicity variables.

The regression also revealed a negative relationship between AM vs. FM signal and power ratios, that the presence of men or women aged 18-54 tended to raise power ratios, and that a station's overall audience share was positively related to a station's power

[16] Napoli notes that advertisers may use ethnicity as a proxy for income. However, consumption patterns do not always track income. Ofori's interviews of broadcast industry participants revealed examples where advertisers were presented with consumption data that advertisers discounted. For example, Judith Ellis presented data in attempt to convince BMW to buy advertising time on two urban radio stations in New York. Her data showed that Black adults, aged 25-54, accounted for 46 percent of the people who owned or leased BMWs in New York. FCC Advertising Study at 26. Recalling a similar discussion with Volvo, Ms. Ellis said: "It was right there in black & white, we were showing them. And then it got down to- what we were told by the buying service-was the head of the dealership who said, "I just don't want to. We just don't want it on that radio station." Id.

ratio. The audience share analysis provided evidence that sellers of audiences are able to charge a premium for larger audiences. This audience size effect compounds the fact that broadcasters serving minorities are usually serving smaller audiences because their target is a numerical minority. When the composition of the audience is not highly valued by advertisers (because the audience is composed primarily of ethnic minorities, for example), the apparent premium on larger audiences will further reduce the station's power ratio. [17]

Napoli concludes that the "lower valuations that advertisers place on minority audiences feed into an economic process that works against minority-targeted content being able to compete and remain viable in both the audience and content markets." He recommends that policymakers examine what steps are required to maintain the financial viability of minority-targeted media outlets in light of these pressures.

Napoli distinguishes the question of encouraging and preserving minority programming from that of encouraging minority ownership. As discussed above, his study did not examine for any independent effect of minority ownership. However, other research suggests that minority ownership makes a difference in content (Bachen, Hammond), that minority owned stations have lower power ratios than other stations with minority-targeted formats (Ofori), that minorities face additional capital market barriers (Bradford) and historical barriers (the Ivy Group). Accordingly, policymakers must take into account the additional pressures that minority-owned media outlets face, particularly in their efforts to serve minority audiences.

[17] It would be interesting to test this hypothesis about audience size and the effect of audiences who are numerical minorities in the context of markets where the ethnic group studied composes a majority or a substantial population of the market. For example, in Los Angeles, and in California as a whole, no one group constitutes an ethnic majority.

Proposed Research Agenda

The authors suggest that the following issues be the subject of further research.

1. Measure broadcaster response to community needs and interests as set forth in the community ascertainment [and top ten issue] reports previously provided by licensees as part of their license renewal applications. This will require an examination of the ascertainment reports in the FCC's possession.

2. Analyze the impact of key FCC deregulatory policy decisions on its minority ownership policy, service to minority and ethnic communities, the number of minority owned stations, and the markets for programming, financing and advertising in which the minority owned stations competed. Some of the key deregulatory policies are: relaxation of multiple ownership rules; relaxation of the three year license holding rule; institution of the LMA policy; and relaxation of the duopoly rules.

3. Measure minority, ethnic and majority owned broadcast station owners' perceptions of their responsiveness to minority and ethnic audience programming and viewpoint needs and interests. Compare broadcaster perceptions with those of minority, ethnic and non majority audiences in the area of license.

4. Compare the findings for selected stations in #1 above with the findings for the same or similarly situated stations in the same markets in # 3 above. How has broadcaster perception of and responsiveness to minority and ethnic preferences and needs changed over time? What impact have the evolving FCC policies [repeal of Fairness Doctrine, relaxation of multiple ownership and duopoly rules, repeal of comparative renewal process] had upon broadcaster responsiveness to minority and/or ethnic audience needs, interests and preferences?

5. Develop a definitive definition of minority and/or ethnic oriented programming based on history of industry standards and definitions. How has it changed over time? Compare and contrast the industry definitions with that derived from a broad survey of the listening and viewing public in select broadcast markets. How do they differ? Finally, how do these definitions mirror or contrast with the ascertainment and/or top ten issues & responsive programming lists provided by licensees at license renewal time? What are the definitive ways to measure viewpoint diversity regarding issues of public importance? How can they be incorporated into an ongoing

assessment of broadcaster and multi-channel provider responsiveness to communities of license/franchise?

6. Survey unsuccessful applicants for broadcast and wireless licenses. Bradford study only surveyed successful broadcast licensees. KPMG suggests further study of the measure availability by examining people who wanted to apply for a license but did not because of discriminatory barriers they encountered. Utilization Ratios for Broadcast Licenses p. 16.

7. Study broadcast auctions to be held Fall 2004.

8. Bradford found that lenders reduce the interest rates on loans to minorities in reaction to cash flows more than they reduce the interest rate charged to non-minority firms. (Bradford, capital markets and auctions, p. 17) Ask Bradford about this finding and if the reduction equalized interest rates or merely reduced the differences between the higher rates minorities were paying. Also, to the extent practices such as minority advertising discounts or no urban/Spanish dictates reduce cash flows, minorities would benefit less from practice.

9. Study broadcast license allocation when the FCC did not take race or gender into account, pre-1978 and post 1996? Study the effect of the abolition of the tax certificate program. The historical study by the Ivy Group discusses anecdotal evidence of the effect of the tax certificate's elimination.

10. Study secondary market transactions in broadcast and wireless, which the FCC ratifies when it approves the license transfer requests. The DOJ ratifies them as well in their anti-trust review. Secondary market transactions raise capital market issues, as well as "old boy networks," in how firms find out about the availability of licenses for transfer. The historical study by the Ivy Group raised some of these issues, but the FCC studies did not examine the secondary market transfers in a statistical way.

11. Examine the effect of FCC installment payments. In certain auctions such as narrowband paging, minority and women bidders with installment payments were able to bid against other businesses without installment payment. In the Personal Communications Service "C" block auction, all bidders had installment payments, effectively nullifying the competitive advantage against fellow bidders. Several of the bidders in the installment payment auction have since declared bankruptcy and are involved in a protracted litigation against the FCC for control of those licenses. The Ernst & Young study does not appear to account for the FCC's reauction of those licenses to other

bidders, which would effect the overall rate of whether or not minorities and women actually obtained (and maintained) the licenses. Additionally, the relative success of minorities and women in auctions following the Ernst & Young study, none of which offered installment payments, should be examined.

12. Examine the effect of bidding credits for minorities and women in auctions 1, 2 and 3 before the Adarand decision. Subsequently, only small businesses qualified for bidding credits. Compare the race-neutral alternative to see how minorities and women fared, including the effect of installment payments or their absence.

13. Examine the profile of FCC licensees regarding their prior industry experience, education, and other factors. This may lead to an alternative development of a utilization ratio. It could also be used to examine Equal Employment Opportunity rules, and their effect on preparing people for ownership positions.

14. The impact of the multiple ownership rule changes including the 1996 Telecommunications Act on minority and female ownership. This occurred in conjunction with the Supreme Court's decision in Adarand and the elimination of the tax certificate program. The multiple ownership rule changes and the elimination of the tax certificate program (while preserving the "race-neutral" tax-free exchange program) were acts of Congress- government acts that should be explored in examining the government's participation in the resulting decline in minority ownership.

Respectfully submitted,

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